

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALLAH,

Petitioner,

No. C06-1334P

v.

ORDER DENYING MOTION FOR  
CERTIFICATE OF  
APPEALABILITY

DOUG WADDINGTON,

Respondent.

This matter comes before the Court on Petitioner's Notice of Appeal. (Dkt. No. 17). The Court construes a notice of appeal of a final order in a habeas proceeding as a motion for a certificate of appealability under 28 U.S.C. § 2253. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997).

Under 28 U.S.C. § 2253(c) a petitioner may not appeal the denial of a habeas corpus petition until the district court or a circuit court issues a certificate of appealability. The Court may only issue a certificate of appealability "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this requirement, the petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 & n.4 (1983)).

In the March 31, 2007, Order adopting Magistrate Judge Benton's Report & Recommendation and dismissing Mr. Allah's habeas petition, the Court concluded that the petition should be dismissed because (a) Mr. Allah is serving a sentence for a case which has not been

1 dismissed, and (b) Mr. Allah may not bring Fourth Amendment claims in a federal habeas proceeding  
2 where he was given a full and fair opportunity to litigate the claims in state court. (See Dkt. No. 15.)  
3 Mr. Allah's notice of appeal does not address these conclusions. Instead, Mr. Allah asserts that two  
4 of the state cases on which he is serving a sentence "are not signed by Elected Judges who had an  
5 oath of office on file." And he asserts that the third state case "is Malicious Prosecution and abuse of  
6 Process," and that all three cases "are Fraud, and a violation of the Constitution of the United States  
7 and Constitution of the State of Washington."

8 Mr. Allah has failed to show that "reasonable jurists could debate whether . . . the petition  
9 should have been resolved in a different manner or that the issues presented were adequate to deserve  
10 encouragement to proceed further." Slack, 529 U.S. at 484 (internal quotation marks omitted). Most  
11 of the arguments presented in the notice of appeal will not be considered because they are new issues  
12 raised for the first time in the notice. The only argument that addresses the Court's previous Order is  
13 the argument that the three state cases violate the federal and state constitutions. This general and  
14 conclusory argument does not raise an issue about whether reasonable jurists could have come to a  
15 different conclusion on Mr. Allah's habeas petition. The motion for a certificate of appealability is  
16 therefore DENIED.

17 The Clerk is directed to send copies of this order to Mr. Allah.

18 Dated this 1<sup>st</sup> day of May, 2007.

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20 Marsha J. Pechman  
21 United States District Judge  
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